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DEPARTMENT FOR NEA/FO, NEA/ARP, L

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SUBJECT: PRODUCTIVE JUDICIAL CONFERENCE IN ABU DHABI

SUMMARY

11. (U) The United Arab Emirates (UAE) hosted the "International Conference of the Presidents of the Supreme Courts of the World" March 23-24, 2008, in Abu Dhabi. Jurists from 32 countries attended the Conference, which focused on relations between federal and local judicial systems; twenty-first century challenges; and the coexistence of Shari'a law with other jurisprudential systems. The gathering offered significant liaison and networking opportunities and laid the basis for closer U.S.-UAE judicial ties at a time of key changes in the UAE judicial system. The U.S. delegation was led by Judge Robert H. Henry of the United States Court of Appeals for the Tenth Circuit. End summary.

CONFERENCE AGENDA & BACKGROUND

12. (U) In mid-2007, the UAE Ministry of Justice (MOJ) notified Embassy Abu Dhabi that it intended to organize a conference to bring together many of the world's leading jurists. The purpose was to study relations between federal and local courts and to learn how federal court systems are organized in other countries.

13. (SBU) Note: Issues regarding the role and powers of federal courts are of keen interest to the UAE, where a large degree of autonomy is retained by individual emirates under the UAE Constitution. The UAE Constitution did not mandate, for example, that emirates join a unified federal court system; Dubai and Ras al Khaimah (RAK) never did so and maintain administratively independent judicial systems, which uphold federal laws and are subject to the Federal Supreme Court on constitutional questions. The five remaining emirates, including Abu Dhabi, opted to form a unified court system at the time the federation was formed. However, Abu Dhabi withdrew from the federal judicial system effective September 2007 and now has separate, independent courts in the same manner as Dubai and RAK. The withdrawal of Abu Dhabi from the unified federal system was not specifically cited as a reason for hosting the proposed conference; however, the impact of Abu Dhabi's withdrawal was clearly being felt at the time the conference was conceived and organized. As the largest and most influential emirate, Abu Dhabi had little difficulty hiring judges and personnel from the federal system to staff its own newly constituted courts and judicial training institute. Since September 2007, the diminished federal system has carried on serving the four smaller emirates that participate. There remain some areas, e.g., national security, in which the federal system continues to preempt local courts, and there are cases wherein the UAE Attorney General retains federal jurisdictional authority. However, these areas are not sharply defined. End note.

14. (U) In mid-November 2007, MOJ announced the March dates for the "International Conference of the Presidents of the Supreme Courts of the World" and invited a select group of Supreme Court Presidents and Chief Justices under the auspices of Dr. Abdel Wahab Abdool,

President of the Union Supreme Court of the UAE. The United States was invited to send a 3-member delegation and to present a paper on the US federal court system.

15. (U) The purpose underlying the conference may be reflected in the letter of invitation to the Chief Justice of the United States: "Seeking to make use of the American experience in the judicial field, it will be our pleasure if your delegation contributes by presenting a discussion paper or research about 'The Relationship between the Federal and Local American Justice', highlighting the hierarchical relationship [between American federal and local courts], the controlling procedures as to their jurisdiction, appealing of decisions, rulings in cases of conflict of jurisdiction....and the coordinating body between the two legal bodies...."

16. (U) After close coordination with the UAE, the delegation designated by U.S. Chief Justice John Roberts included Chief Judge Robert H. Henry and Judge David Ebel of the U.S. Court of Appeals for the Tenth Circuit, and Hon. Jeffrey P. Minear, Administrative Assistant to the Chief Justice of the United States. USDOJ/OPDAT representatives James Silverwood and Michael Gunnison also attended. (Note: U.S. Supreme Court Justices could not attend due to a conflict with oral arguments. End note.)

17. (U) The first day of the 2-day conference focused entirely on "The Relationship between Federal and Local Justice." After Dr. Abdool's opening remarks, Chief Judge Henry delivered his address and presented his paper, entitled "The Relationship Between Federal and Local Justice: The Creation of a Federal Court System in a New Republic: An Historic Perspective on the United States Experience." Other speakers invited to make presentations on federalism and the

ABU DHABI 00000718 002 OF 003

courts included:

- Hon. Dr. Klaus Tolkdorf, President of the Federal Court of Justice of Germany ("The Relationship Between the Federal and Local German Justice Courts");
- Hon. Ellen Gracie Northfleet, Chief Justice of the Federal Supreme Court of Brazil ("Structure, Organization and Bodies of the Brazilian Judicial Branch");
- Hon. Ghislain Londers, First President of the Court of Cassation of Belgium ("The Belgium Judicial System and its Relationship with the European Judicial System");
- Hon. Petr Serkov, Deputy President of the Supreme Court of the Russian Federation ("Relations Between the Federal and Local Courts in the Russian Federation");
- Hon. Margarita Beatriz Luna Ramos, Justice of the Supreme Court of Mexico ("The Mexican United States Judicial System");
- Hon. Shri K.G. Balakrishnan, Chief Justice of India ("An Overview of the Indian Justice Delivery Mechanism");
- Hon. Abdul Hamid bin Haji Mohamad, President of the Supreme Court of Malaysia ("Judicial and Legal System in Malaysia");
- Hon. Sir Gerard Brennan, Former Chief Justice of the High Court of Australia ("Australia: A Unified Jurisdiction Administering a Diversity of Laws");
- Hon Francisco Jose Hernando Santiago, President of the Supreme Court of Spain ("Judicial System in Spain");
- Hon Justice Zakeria Mohammed Yacoob, Justice of the Constitutional Court of South Africa ("The South African Judicial System");
- Dr. Mohammed Butti Thani Alshamsi, Manager of Post Graduate Studies Department, Dubai Police Academy ("Judicial System in the UAE"); and
- Hon Abdul Hameed Dogar, Chief Justice of the Supreme Court of Pakistan ("Relations Between Federal and Local Judiciary").

18. (U) Each speaker was allotted only 20 minutes and time constraints proved an obstacle to detailed question and answer sessions. The only moment of controversy occurred when Pakistan's Chief Justice was challenged regarding the treatment and detention of Pakistan's former Chief Justice and other Pakistani jurists. The Chief Justice responded that these measures would be lifted and many judges reappointed in the near future.

19. (U) The second day focused on "Justice and the Challenges of the

21st Century" and "Islamic Sharia as a Universal Legal System in Juxtaposition with Other Legal Systems of the World." The diverse group speaking on 21st century challenges included:
--- Hon. John L. Murray, Chief Justice of Ireland;
--- Hon. Driss Dahak, Chief Justice of the Supreme Court of Morocco;
--- Hon Pierre Sargos, President of Chamber at the Court of Cassation of France;
--- Hon. Dr. H.C. Mellinghoff, Justice of the Federal Constitutional Court of Germany;
--- Hon. Dr. Bagir Manan, Chief Justice of the Supreme Court of Indonesia;
--- Hon. Huang Songyou, Vice President of the Supreme People's Court of the People's Republic of China; and
--- Professor Tania Sourdin, Australian Centre for Peace and Conflict Studies, University of Queensland.

¶10. (U) Those addressing Sharia Law included a number of regional and UAE-based experts:
--- Hon Muhammad Samid Al-Raqqad, President of the Court of Cassation of Jordan;
--- Hon. Jalal Al-Din Muhamad Uthman, Chief Justice of the Supreme Court of Sudan;
--- Professor Dr. Jassim Ali Salem Al-Shamsi, Dean of the Law Faculty, UAE University, Al Ain;
--- Professor Dr. Muhammad Shalal Al-Ani, Dean of the College of Law, University of Sharjah;
--- Hon. Shihab Abdul Rahman Al-Hamadi, Judge of the Union Supreme Court of UAE;
--- H.E. Judge C.G. Weeramantry, Former Vice President of the International Court of Justice, and Former Judge of the Supreme Court of Sri Lanka;
--- Hon Judge Abdul Azia Al-Yaquobi, Judiciary Department, Emirate of Abu Dhabi;
--- Professor Dr. Abed Al-Naser Mosa Abu Al Bassal, Dean of the College of Sharia and Islamic Studies, University of Sharjah; and
--- Hon. Anees Muhamad Nuri Mashooh, Judge, Ajmaan Federal Appellate Court.

¶11. (SBU) On the final day, Chief Judge Robert Henry was invited by UAE MOJ Counselor Abdul Rahman Al Boloushi to participate in a 10-member committee to draft a communique summarizing the conference. The 1-page "Abu Dhabi Declaration" focused on the uniqueness of the conference as a venue for the exchange of views on issues of concern to legal experts around the world, specifically experiences with federal and unitary judicial systems; challenges facing justice in the twenty-first century (including human rights, the environment, globalization, and scientific developments), and repercussions for

ABU DHABI 00000718 003 OF 003

the development of law and the administration of justice. The Declaration also noted the discussion of Islamic Shari'a as a legal system, and not only as a jurisprudential heritage.

CONCLUSION/COMMENT

¶12. (SBU) STEALTH SELF-REFLECTION. The Conference focused largely on federal/local court organization and jurisdiction, i.e., matters that go directly to the heart of key issues the UAE judiciary faces today. Not surprisingly, the Emiratis chose not to air their specific problems publicly. However, conference organizers will likely report to the UAE leadership and use submitted materials to study federal models prevailing in the countries represented.

¶13. (U) FOLLOW UP QUESTIONS. UAE has already utilized the newly-established relationships with world jurists to seek further guidance in matters affecting the UAE judiciary. On April 28, 2008, UAE Union Supreme Court President Abdool wrote to Chief Judge Henry thanking him for participating in the conference and requesting further information regarding the U.S. court system, specifically:
a) whether the U.S. Supreme Court has appellate jurisdiction to pass on decisions by state Supreme Courts, and if so, what if any limits on such appellate authority exist; b) whether the U.S. Supreme Court can, on its own motion or on application of a party, assert authority to hear a suit or claim pending in a local court if the Federal

Supreme Court believes the local court is slow in its proceedings in a way damaging to justice; and c) whether any special judicial standing attaches to the capital province in the United States by virtue of its status. Dr. Abdool also requested a copy of the latest U.S. Court rules.

¶14. (U) TIME AN IMPEDIMENT TO FULL DISCUSSION. The second conference session on twenty-first century challenges offered what one would expect from a summit of Supreme Court Presidents and Chief Justices. Considering the strong and diverse field of jurists, this session offered a unique opportunity to share views about trends in law and legal systems. However, the small number of jurists called upon to make presentations, and the short time accorded each presenter, were serious obstacles to what might have been a much more meaningful session. Nonetheless, useful exchanges included Professor Tania Sourdin's impressive handling of the topic of court-based alternative dispute resolution systems.

¶15. (SBU) DEMYSTIFYING SHARI'A LAW. The session on Shari'a law appeared designed, at least in part, to de-mystify Shari'a for Western conference participants and to demonstrate how Shari'a, reasonably interpreted, is not only compatible with other systems of jurisprudence but accommodates twenty-first century legal developments. This session promoted the idea that Western and Shari'a-based systems can co-exist cooperatively. The UAE is entering into bilateral treaty relationships with most major Western countries (with the notable exception of the U.S.) regarding Mutual Legal Assistance, Extradition, and Judicial Cooperation on Civil and Commercial Matters. This session may have been designed in part to assuage concerns about entering into such relationships with countries which follow Shari'a. For participants from countries with Shari'a traditions, the session may have demonstrated the UAE's commitment to Muslim principles even while it continues its Westward-leaning ways. The UAE has relegated Shari'a largely to matters of family law and personal status, and in December 2006 adopted statutory rules that ban traditional Shari'a punishments in criminal cases (Federal Law 52 of 2006). The UAE walks a fine line between its Arab Muslim loyalties and its desire to move Westward and forward faster than many of its more conservative neighbors. The conference may in part have been a UAE effort to persuade Arab jurists that Western legal systems have much to offer and that the adoption of elements of Western jurisprudence does not do violence to the Shari'a underpinnings of Muslim legal systems.

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